



LAKE COUNTY FLORIDA

OFFICE OF PROCUREMENT SERVICES
315 WEST MAIN STREET, SUITE 416
PO BOX 7800
TAVARES FL 32778-7800

BID Number 10-0819
Replacement of Leachate Tanks

PHONE: (352) 343-9839
FAX: 352) 343-9473

www.lakegovernment.com

CHAPTER 1 GENERAL CONTRACTOR'S AGREEMENT

This Contract For Construction is entered into between: **Lake County, Florida, a political subdivision of the State of Florida**, hereinafter the "OWNER," and **Beach Construction Company, Inc.**, a Florida corporation, its successors and assigns, hereinafter the "GENERAL CONTRACTOR". This Contract For Construction shall be effective on the date signed by the last party to do so.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner, the General Contractor and the Professional are:

OWNER:

Representative:	Gary Debo, Solid Waste Operations Manager
Address:	P.O. Box 7800
City, State, Zip:	Tavares, Florida 32778
Office:	(352) 343-3776
Fax:	(352) 253-1690
Email	gdebo@lakecountyfl.gov

GENERAL CONTRACTOR:

Representative:	David A. Beach, President
Address:	P.O. Box 141860
City, State, Zip:	Gainesville, Florida 32614
Office:	(352) 335-5556
Fax:	(352) 335-5665
Email:	david@beachconstruction.net
License #:	CGC 053548

PROFESSIONAL (Architect):

Representative:	Jones Edmunds & Associates, Inc.
Address:	730 Northeast Waldo Road
City, State, Zip:	Gainesville, FL 32641
Office:	(352) 377-5821
Fax:	(352) 377-3166

Whenever this Contract For Construction refers to "Professional" in the singular, such reference shall mean the Owner's designated representative.

CONTRACT FOR CONSTRUCTION
(General Contractor's Fixed Price Form)

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OWNER'S PROJECT IDENTIFICATION INFORMATION:

Project Title: Replacement of Leachate Tanks
Project Location Lake County Central Landfill, Tavares, Florida
Project ID Number: ITB No. 10-0819

RECITALS

- A. The Owner intends to construct the Project and is engaging the General Contractor to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Project.
- B. The Owner and General Contractor each acknowledges that it will act in good faith in carrying out its duties and obligations.
- C. The Owner's engagement of the General Contractor is based upon the General Contractor's representations to the Owner that it (i) is experienced in the type of labor and services the Owner is engaging the General Contractor to perform; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform general construction services for the Project; and (iv) has the expertise and ability to provide general construction services which will meet the Owner's objectives and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- D. The Owner and General Contractor each acknowledges that it has reviewed and familiarized itself with this Contract for Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.
- E. The Owner has engaged one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**ARTICLE 1
CONTRACT DOCUMENTS**

- 1.1 The "Contract For Construction" is comprised of the following documents:

This "Chapter 1 - General Contractor's Agreement (General Contractor's Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda;

"Chapter 2 - General Contractor's Required Services (General Contractor's Form)" (hereafter "Chapter 2"), and all attached documents, appendices and addenda;

"Chapter 3 - General Terms and Conditions of General Contractor's Contracts" (hereafter "Chapter 3") and all attached documents, appendices and addenda;

The Construction Documents, now existing as set forth in ITB 10-0819, or issued hereafter;

Any amendments or addenda executed by the Owner and the General Contractor hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any:

X Additional Documents:

Addendum #1 to ITB 10-0819, dated April 26, 2010

Addendum #2 to ITB 10-0819, dated May 26, 2010

Addendum #3 to ITB 10-0819, dated June 1, 2010

All relevant Addenda, if any, are attached hereto as Appendix D and incorporated herein.

- 1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract For Construction.
- 1.3 The Owner shall not furnish the General Contractor with a copy of the Construction Documents; provided, however, that the General Contractor may obtain copies of the plans and specifications from the reprographic company having the original documents.

ARTICLE 2 NOTICES

- 2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is (i) hand delivered; (ii) delivered by telex, facsimile, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by telex, facsimile, or telecopy shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

ARTICLE 3 SCOPE OF GENERAL CONTRACTOR'S WORK

- 3.1 The General Contractor shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of its scope of the Work in accordance with all of the terms and conditions of this Contract For Construction.
- 3.2 Specifications: All drawings and specifications as set forth in ITB 10-0819 shall be incorporated herein and made a part of this Contract for Construction.

ARTICLE 4

COMPENSATION OF GENERAL CONTRACTOR

- 4.1 **Construction Price.** The Owner shall pay and the General Contractor shall accept, as full and complete payment for the General Contractor's timely and complete performance of its obligations hereunder the fixed price of **Two Hundred Seventy-Six Thousand Dollars and No/100 Dollars (\$276,000.00).**

The amount set forth above is the Construction Price and includes the aggregate amount of all allowances and any unit price items to be furnished or installed. Permit fees for this project shall be included in the Schedule of Values and shall be paid directly by the General Contractor. The Owner shall provide a direct reimbursement to the General Contractor in the amount of the allowance, and such shall be shown in the General Contractor's Schedule of Values, and submitted with the monthly pay application. If the fees exceed the allowance, the General Contractor shall submit a request for a Change Order.

- 4.2 **Compensation Schedule.** Prior to execution of this Contract For Construction, the General Contractor shall prepare and present to the Owner and to the designated Professional the General Contractor's Compensation Schedule which includes, as applicable: *[Check applicable items]*

- ☒ A. Schedule Of Values for payment of the Construction Price on a lump sum basis for each of the major sixteen divisions of construction. The Schedule of Values must reflect total construction cost;
- ☐ B. Time Schedule for payment of the Construction Price on a lump sum basis;
- ☐ C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis; and
- ☐ D. Rates for compensation for services rendered on a time and material basis.
- ☐ E. Compensation for goods furnished on a time and material basis.
- ☒ F. Allowances.
- ☐ G. Lump sum payment after acceptance of the project by the Owner.

The Compensation Schedule, once approved, shall be attached hereto and incorporated herein as Appendix A.

- 4.3 **Payment.** On the 25th of each month, the General Contractor shall prepare an application for payment in accordance with Article 15, Chapter 3, which reflects all construction activities completed to date, for the review of the Professional and the Owner. The Owner shall pay to the General Contractor ninety percent (90%) of the total

amount approved by the Professional, withholding the balance as retainage, unless there is a dispute about the amount of compensation due the General Contractor. The date on which payment is due shall be referred to as the "Payment Date". The General Contractor may request a reduction in the retainage, but such reduction must be approved by the Owner. The Contractor shall be required to submit an updated Critical Path Method (CPM) schedule with the monthly applications for payment. The CPM is a requirement for payment. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received. Prior to final payment the General Contractor shall provide all contract close out documents including but not limited to as-builts, operating and maintenance manuals, and warranties. Additionally, the General Contractor must complete all punch-list items prior to final payment. The Owner shall make all payments in accordance with Part VII, Chapter 218, Florida Statutes, entitled the Florida Prompt Payment Act.

- 4.3.1 If the Contract Amount exceeds \$200,000, but is less than \$10,000,000, the General Contractor shall prepare a list of items to be rendered complete, satisfactory, and acceptable within thirty (30) calendar days after reaching Substantial Completion. Failure of the General Contractor to include any corrective work or pending items not yet completed on the list developed pursuant to this section does not alter the responsibility of the General Contractor to complete all construction services set forth herein. Upon completion of all items on the list, the General Contractor may submit a payment request with its next monthly invoice for all remaining retainage withheld by the Owner. If a good-faith dispute exists as to whether one or more items have been completed pursuant to this Contract for Construction, the Owner may continue to withhold an amount not to exceed 150% of the total costs to complete the remaining items. The General Contractor's project representative shall be required to review these estimates with the Owner and sign the estimate in agreement.

All requests for payment of retainage shall be in accordance with the Florida Prompt Payment Act.

- 4.4 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, such damages shall be imposed where the delay to the Substantial or Final Completion date of a phase is due to the fault of the General Contractor, and are calculated at the rate of **Two Hundred Fifty Dollars (\$250.00)** per calendar day for failure to meet the required date of Substantial Completion. Liquidated damages are the sole remedy for delays caused by the General Contractor. The parties agree that Liquidated Damages are not being assessed as a penalty.

- 4.5 **General Conditions Cost.** Items within the Lump Sum General Conditions Cost for which the General Contractor is entitled to no additional compensation (except where a change order adds additional work and additional General Conditions are authorized by Chapter 3, Paragraph 9.5.4) include, without limitation:

- 4.5.1 costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the General Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed,

whether sold to others or retained by the General Contractor. Cost for items used by the General Contractor shall mean fair market value;

- 4.5.2 costs incurred to provide site safety (excluding subcontractor safety costs);
- 4.5.3 costs of removal of debris from the site;
- 4.5.4 costs of document reproduction including bid sets, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office;
- 4.5.5 that portion of the reasonable expenses of the General Contractor's personnel incurred while traveling in discharge of duties directly connected with the Work;
- 4.5.6 sales, use or similar taxes imposed by a governmental authority and paid by the General Contractor, and directly related to the Work.
- 4.5.7 data processing costs directly related to the Work; however, these costs shall not include any hardware, software, or CADD costs;
- 4.5.8 expenses incurred in accordance with the General Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work;
- 4.5.9 the cost of obtaining and using all temporary utility services required for the Work;
- 4.5.10 all reasonable costs and expenditures necessary for the operation of the site office, such as stationary, supplies, blueprinting, furniture, fixtures, office equipment and field computer services;
- 4.5.11 rental charges for temporary facilities, and for machinery, equipment, and tools not customarily owned by construction workers;
- 4.5.12 wages, salaries, bonuses and incentive compensation, of the General Contractor's supervisory, technical, administrative and clerical personnel engaged in supervision and management of the Work on or off the Project Site, including all company overhead and expenses; and
- 4.5.13 cost of fringe benefits, contributions, assessments and taxes, including for example such items as Unemployment Compensation and Social Security, to the extent that such cost is required by law and is based on the compensation paid to the General Contractor's employees.

ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS

- 5.1 The Contractor shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida, and which are acceptable to the County, insurance policies containing the following selected types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the

Contractor or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

Contractor shall not commence work under the Agreement until County has received an acceptable certificate of certificates of insurance evidencing the required insurance, which is as follows:

- (i) General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$1,000,000/2,000,000
Products-Completed Operations	\$2,000,000
Personal & Adv. Injury	\$1,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

- (ii) Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit	\$1,000,000
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- (iii) Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the vendor must provide a notarized statement that if he or she is injured, he or she will not hold the County responsible for any payment or compensation.

- (iv) Employers Liability with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employer	\$1,000,000
Disease-Policy Limit	\$1,000,000

- (v) Builders Risk Insurance with all-risk perils for 100% of the contract amount ☒ is /
☐ is not required.

- (vi) Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on all applicable policies.

- (vii) Certificate(s) of insurance shall provide for a minimum of sixty (60) days prior written notice to the County of any change, cancellation, or nonrenewal of the required insurance.

- (viii) Certificate(s) of insurance shall identify the contract number in the Description of Operations section of the Certificate.
- (ix) Certificate of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the County.
- (x) Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA,
AND THE BOARD OF COUNTY COMMISSIONERS
P.O. BOX 7800
TAVARES, FL 32778-7800
- (xi) All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such self-insured retentions; or the vendor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.
- (xii) The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the vendor and/or subcontractor providing such insurance.
- (xiii) The Contractor shall be responsible for subcontractors and their insurance. Subcontractors are to provide Certificates of Insurance to the County evidencing coverage and terms in accordance with the Contractor's requirements.
- (xiv) Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.
- (xv) Neither approval by the County of any insurance supplied by the vendor, nor a failure to disapprove that insurance, shall relieve the vendor of full responsibility of liability, damages, and accidents as set forth herein.

ARTICLE 6 PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

- 6.1 The General Contractor shall, prior to the execution of this Contract for Construction, prepare and attach as Appendix B to this Chapter the General Contractor's Personnel Chart which lists by name, job category and responsibility the General Contractor's primary employees who will work on the Project. The General Contractor shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right, with valid reason, to reject any proposed replacement.
- 6.2 The General Contractor (i) shall within ten (10) days after award of the bid, prepare and provide to the Owner the Schedule of Values, CPM Schedule, General Contractor's

Personnel Chart and Subcontractors And Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the General Contractor to provide goods or services with respect to the Project; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection with full compensation to be paid the General Contractor, with mark-up, for any premium costs in changing Subcontractors or Suppliers at the Owner's direction; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement with full compensation to be paid the General Contractor, with mark-up, for any premium costs in changing Subcontractors or Suppliers at the Owner's direction.

ARTICLE 7 CONSTRUCTION SCHEDULE AND SPECIFIC BOND REQUIREMENTS

7.1 Time For Performance.

7.1.1 **Commencement Of Construction.** The General Contractor shall commence construction of its scope of the Work within ten (10) calendar days of receipt of the Notice To Proceed, hereinafter the "Commencement Date."

7.1.2. **Substantial Completion.** The General Contractor shall accomplish Substantial Completion of its scope of the Work on or before one hundred eighty (180) calendar days (the "required date of Substantial Completion") from the issuance of the Notice to Proceed.

7.1.3. **Final Completion.** The General Contractor shall accomplish Final Completion of its scope of the Work on or before two hundred ten (210) calendar days from the issuance of the Notice to Proceed, hereinafter the "required date of Final Completion".

7.2 Construction Schedule. The General Contractor shall *[Select and complete as appropriate]*

☐ not less than _____ calendar days after execution of this Chapter 1, or

☒ no later than ten (10) calendar days after issuance of the Notice to Proceed

prepare and submit a preliminary Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 3, Paragraph 16.1 of this Contract For Construction.

7.3 Bond Requirements.

7.3.1 The General Contractor shall be required to provide payment and performance bonds. The amount of the premiums for such bonds shall be included in the Construction Price. Performance and Payment Bonds shall be 100% of the contract amount and shall be executed on forms provided by the Owner. All original Performance and Payment Bonds will be submitted to Lake County Procurement Services for recording in the public records of Lake County, Florida,

at the cost of the General Contractor. The bonds will be acceptable to the Owner only if the following conditions are satisfied:

- (i) The Surety is licensed to do business in the State of Florida;
- (ii) The Surety holds a Certificate of Authority authorizing it to write surety bonds in this State;
- (iii) The Surety has twice the minimum surplus and capital requirements required by the Florida Insurance Code at the time the contract is issued;
- (iv) The Surety has a current rating of A or A- as reported in the most current Best Key Rating Guide, published by A.M. Best Company, Inc., if the contract price exceeds \$500,000;
- (v) The Surety is otherwise in compliance with the Florida Insurance Code; and
- (vi) The Surety holds a currently valid Certificate of Authority issued by the United States Department of Treasury under 31 U.S.C. ss 9304.

If the Surety for any bond furnished by the General Contractor is declared bankrupt, becomes insolvent, its right to do business is terminated in the State of Florida, or it ceases to meet the requirements imposed by this Agreement, the General Contractor shall, within five (5) calendar days thereafter, substitute another bond and surety, both of which shall be subject to the Owner's approval.

7.3.2 The General Contractor [] shall [X] shall not be required to provide a maintenance bond.

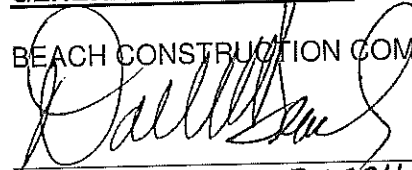
ARTICLE 8 AMENDMENTS TO CHAPTER 3

8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:

X None

GENERAL CONTRACTOR

BEACH CONSTRUCTION COMPANY, INC



Name: DAVID A. BEACH


Title: PRESIDENT

This ____ day of _____, 2010.

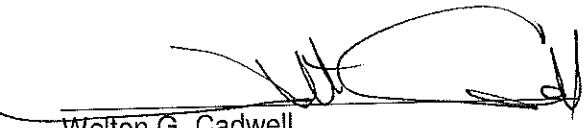
OWNER

LAKE COUNTY, through its
BOARD OF COUNTY COMMISSIONERS

ATTEST:



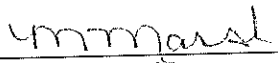
for N.K.
Neil Kelly, Clerk
of the Board of County
Commissioners of Lake
County, Florida



Welton G. Cadwell
Chairman

This 6th day of December, 2010.

Approved as to form and legality:



Melanie N. Marsh
Acting County Attorney

APPENDIX A **GENERAL CONTRACTOR'S COMPENSATION SCHEDULE**

ATTACHMENTS

ITB Number: 10-0819

SCHEDULE OF VALUES

LAKE COUNTY BOARD OF COUNTY COMMISSIONERS

ENVIRONMENTAL UTILITIES DEPARTMENT

PROJECT: REPLACEMENT OF LEACHATE TANKS AT THE LAKE COUNTY CENTRAL LANDFILL

SCHEDULE OF VALUES FORM TO BE SUBMITTED WITHIN TEN (10) CALENDAR DAYS OF COUNTY REQUEST IN SUPPORT OF EVALUATION/AWARD PROCESS.
(PLEASE FILL IN ALL OF AMOUNT COLUMN WITH DOLLAR AMOUNT)

PROJECT DURATION (240 CALENDAR DAYS FROM COMMENCEMENT TO FINAL COMPLETION)

Item No.	Specification Section	Description	Engineer Estimated Quantities	Unit	Price
1	Various	Payment and Performance Bonds	1	Lump Sum	\$5,520 ⁰⁰
2	Various	Mobilization/Demobilization/Clean up	1	Lump Sum	\$6,000 ⁰⁰
3	Various	Civil Work	1	Lump Sum	\$46,000 ⁰⁰
4	15020	Mechanical Work	1	Lump Sum	\$208,480 ⁰⁰
5	16020	Electrical Work	1	Lump Sum	\$10,000 ⁰⁰
6	Various	Related Work (none specified)	1	Lump Sum	\$ - 0 -
7		Annual Maintenance (none specified)	1	Lump Sum	\$ - 0 -
Total of Lump Sum Items					\$276,000 ⁰⁰

APPENDIX B GENERAL CONTRACTOR'S PERSONNEL CHART

EXPERIENCE OF KEY EMPLOYEES (INCLUDING OWNERS)

DAVID A BEACH -- President of Beach Construction is a registered civil engineer and a licensed general contractor. He has been a principal in Beach Construction for nineteen (19) years, building, repairing, and rehabilitating water and wastewater plants exclusively. Prior to formation of this company, he was a partner in Koblar Constructors for thirteen (13) years, a company also devoted exclusively to water and wastewater construction. He has final responsibility for field operations and estimating oversight.

ROB GRIER -- Vice President/General Superintendent is a licensed general contractor and has been with Beach Construction for seven (7) years. He has final responsibility for field job supervision. Prior to this, he was a pipe sales representative for National Waterworks.

SETH G SIMMONS -- Vice President/Project Manager and a licensed general contractor, has been with Beach Construction for seven (7) years. He is responsible for oversight of contracts, materials procurement and personnel assignments for specific projects. He coordinates the time frames and is the company representative to owners and engineers.

ADAM BRANG -- Vice President/Project Manager; similar responsibilities as Simmons. He is also a licensed general contractor, and has been with the company for over five (5) years.

RANDY BISHOP -- Secretary/Chief Estimator, has been with Beach Construction for 16 years, and is responsible for all the estimating functions.

ADDITIONAL PERSONNEL -- The following are Superintendents, one of which will be assigned to this project, depending on when it is awarded and the status of projects they currently have underway. Any one of these has extensive experience in the water and wastewater industry.

- Marvin White
- Joe Gore
- Tony Colburn
- Mike Lackey
- Cliff Hathcox
- Kevin Opperman
- Patrick Dewitz

BEACH CONSTRUCTION COMPANY KEY PERSONNEL

Name	Position	Year started with Beach Construction	Year started in construction	Prior positions and experience in construction
→ David A. Beach, P.E.	President <i>Sr. Executive Project Manager</i>	1991	1975	State Certified General Contractor, Underground Utilities Contractor, Pollutant Storage Contractor, and licensed Professional Engineer with more than 30 years experience in water and wastewater construction. Formerly a partner in Koblar Construction.
→ Adam E. Brang	Vice President/ Project Manager	2003	2001	State Certified General Contractor. Began working at Beach Construction as a student intern from Santa Fe Community College and the University of North Florida College of Building Construction. He joined Beach Construction full time upon graduation.
William R. Bishop	Corporate Secretary/ Senior Estimator	1992	1973	Randy began his career setting rebar. He worked for Koblar Steel Erectors and moved into project estimating and drafting.
→ Dennis Chapman	Superintendent	2007	1970	Dennis began his career constructing seawalls and docks. He is a millwright and has extensive experience in finish and form carpentry for residential/commercial projects. He was hired by Beach as a superintendent for mechanical installations.
Tony Colburn	Superintendent	1994	1991	Tony began his career with Koblar Construction. He has more than ten years experience building multi-million dollar water and wastewater projects.
Patrick Dewitz	Superintendent	2008	2001	Patrick began his construction career as an electrical apprentice. Within twelve months of working at Beach Construction he was promoted to superintendent.
→ Robert E. Grier	Vice President/ General Superintendent	2003	1984	Formerly in pipe sales with National Waterworks. Knowledgeable in all aspects of construction, particularly piping.
Joseph Gore	Superintendent	1991	1972	Joe started his career as a commercial painter and moved into carpentry. He worked his way to superintendent at Koblar Construction and was hired as a superintendent for Beach.

**APPENDIX C
GENERAL CONTRACTOR'S
SUBCONTRACTORS AND SUPPLIERS CHART**

ATTACHMENTS

ITB Number: 10-0819

**APPENDIX C
GENERAL CONTRACTOR'S
SUBCONTRACTORS AND SUPPLIERS CHART**

{Insert Information as required}

TANK SUBCONTRACTOR - FLORIDA AQUASTORE
ELECTRICAL SUBCONTRACTOR - ORANGE ELECTRICAL
BEACH CONSTRUCTION WILL DO ALL OTHER WORK

APPENDIX D: ADDENDA

Addendum #1 to ITB 10-0819, dated April 26, 2010

Addendum #2 to ITB 10-0819, dated May 26, 2010

Addendum #3 to ITB 10-0819, dated June 1, 2010



LAKE COUNTY
FLORIDA

OFFICE OF PROCUREMENT SERVICES
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PO BOX 7800
TAVARES FL 32778-7800

PHONE: (352) 343-9839
FAX: 352) 343-9473
www.lakegovernment.com

ADDENDUM NO. 1

Date: April 26, 2010
BID Number 10-0819
Replacement of Leachate Tanks

This addendum is being issued to make the following changes, corrections, clarifications and additions to the bidding document. The information in this addendum modifies and changes the original bidding documents and takes precedence over the original documents. Respondents shall acknowledge receipt of this addendum by completing this form and returning it with the response. Failure to acknowledge this addendum may preclude consideration of the bid proposal award.

This project is temporally on hold until questions can be answered by the engineering firm brought forth by bidders via email and/or during the pre bid conference.

Another addendum will be issued to clarify/add/change any original specifications, terms and conditions and adjusting the bid opening date in the near future (next couple of weeks).

Firm Name: Beach Construction Company, Inc. Date: 06/23/2010
Signature: *David A. Beach* Title: President
Typed/Printed Name: David A. Beach

"Earning Community Confidence Through Excellence in Service"

DISTRICT ONE
JENNIFER HILL

DISTRICT TWO
ELAINE RENICK

DISTRICT THREE
JIMMY CONNER

DISTRICT FOUR
LINDA STEWART

DISTRICT FIVE
WELTON G. CADWELL



OFFICE OF PROCUREMENT SERVICES
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ADDENDUM NUMBER 2

Date: May 26, 2010
BID Number 10-0819
Replacement of Leachate Tanks

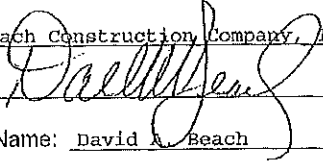
This addendum is being issued to make the following changes, corrections, clarifications and additions to the bidding document. The information in this addendum modifies and changes the original bidding documents and takes precedence over the original documents. Respondents shall acknowledge receipt of this addendum by completing this form and returning it with the response. Failure to acknowledge this addendum may preclude consideration of the bid proposal award.

Change/add/clarify the following:

- Vendor Equipment Staging-- can use the banks of the retention pond.
- Vendor Equipment Staging -- can use the area east of the tanks by the Sheriff's garden area (actual area needed will need to be coordinated with the County, prior to mobilization and temporary fencing may be required).
- Road closure to unload equipment, etc is possible and the contractor will need to provide traffic control.
- Replacement of cement floor coating/sealant inside the containment structure may be needed; County will do a separate solicitation if necessary. The successful vendor will take all necessary steps to prevent additional damage to these areas during construction activities. The concrete inside the wetted areas of the storage tanks will be required, per manufacturer's recommendations; compatible for the leachate liquids anticipated to be stored (Laboratory analysis is attached).
- No waiver of landfill fees, however you do not need to dispose at our facility.
- Fencing can be removed for easy access however contractor will need to secure the area every evening and reinstall fencing when project is completed.
- Any solids in tanks will be disposed by the County.
- Location of pipes have to stay where they are now located.
- Original installer of tanks was Florida Aquastore.
- There is no geotechnical report available for this project.

- Limits of work will be required as specified in the bidding documents.
- New bid opening date is June 23, 2010 at 3:00pm.

Firm Name: Beach Construction Company, Inc. Date: 06/23/2010

Signature:  Title: President

Typed/Printed Name: David A. Beach

"Earning Community Confidence Through Excellence In Service"

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JENNIFER HILL

DISTRICT TWO
ELAINE RENICK

DISTRICT THREE
JIMMY CONNER

DISTRICT FOUR
LINDA STEWART

DISTRICT FIVE
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LAKE COUNTY
FLORIDA

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ADDENDUM NO. 3

Date: June 1, 2010
BID Number 10-0819

Replacement of Leachate Tanks

This addendum is being issued to make the following changes, corrections, clarifications and additions to the bidding document. The information in this addendum modifies and changes the original bidding documents and takes precedence over the original documents. Respondents shall acknowledge receipt of this addendum by completing this form and returning it with the response. Failure to acknowledge this addendum may preclude consideration of the bid proposal award.

Change/add/clarify the following:

Question:

ITB document page number 37, Article 7, Items 7.1.2. and 7.1.3 contains conflicting information. Please clarify: is the Substantial Completion one hundred eighty or 210 calendar days; and is the Final Completion two hundred ten or 240 calendar days?

Answer:

Throughout bidding document in various sections and articles please change the following:

Substantial Completion is one hundred and eighty (180) days and final completion is two hundred and ten (210) days.

Firm Name: Beach Construction Company, Inc. Date: 06/23/2010

Signature: [Signature] Title: President

Typed/Printed Name: David A. Beach

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CHAPTER 2 GENERAL CONTRACTOR'S REQUIRED SERVICES

ARTICLE 1 GENERAL PROJECT SERVICES

- 1.1 **Essential Services.** The General Contractor agrees to provide all services required to professionally complete its Scope of Services in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.
- 1.2 **Compliance With Contractual Requirements.** At all times the General Contractor is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.
- 1.3 **Cooperative Effort.** The General Contractor shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Relationship To Professional.** The Owner's designated Professional will represent the Owner in dealing with the General Contractor on all design and technical matters, and will administer this Contract For Construction. Unless otherwise directed by the Owner, the Owner and the General Contractor shall communicate with each other in the first instance through the designated Professional. The Owner's instructions to the General Contractor will be issued through the designated Professional.
- 1.5 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

2.1 **Construction Documents Review.**

- 2.1.1 Prior to submittal of its bid, the General Contractor shall have reviewed the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness to identify:
- (i) conflicts, omissions or overlaps, and unusual design details affecting construction cost and schedules;
 - (ii) notify the Owner and the Professional in writing of any variances between the Construction Documents and applicable laws, statutes, building codes, rules and regulations of which it is aware; and
 - (iii) factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives.

2.1.2 Upon completion of its review of the Construction Documents, the General Contractor shall:

- (i) notify the Owner and/or Professional in writing of all problems, conflicts, defects, omissions, overlaps or deficiencies of which it became aware and request written clarification; and
- (ii) assist the Professional with the resolution of the identified problems, conflicts, defects, omissions, overlaps and deficiencies.

2.2 **Scheduling.** The General Contractor understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The General Contractor shall timely prepare and submit the CPM Schedule from the date of Notice to Proceed through the Final Completion date for the Owner's review and approval. This schedule is to be updated monthly, unless the Owner otherwise exempts the General Contractor from this provision, and attached to the pay application. Failure to submit or update the schedule to reflect current field conditions shall result in non-payment or delay of payment until the CPM is received

ARTICLE 3 CONSTRUCTION SERVICES

3.1 Construction Supervision.

3.1.1 The General Contractor shall supervise and direct its scope of the Work. The General Contractor shall, at a minimum:

- (i) provide an on-site job superintendent, if required by the Owner, who shall speak, read and write English, and who shall supervise all trades and direct all construction activities, establish and maintain construction schedules and submit to the Owner daily progress reports. The superintendent shall not be a hands-on tradesman. The Owner shall retain the authority to remove the superintendent with cause with ten (10) calendar days written notice. The superintendent shall stay on the job through 100% of construction and final punch-list items. The superintendent shall additionally be responsible to coordinate the safety program at the job site. Any person employed by the General Contractor or a subcontractor who is found to be conducting themselves in a detrimental manner shall be removed from the job site immediately upon notification to the superintendent.
- (ii) coordinate trade contractors and suppliers, and supervise all construction services.
- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction.
- (iv) check and approve shop drawings and materials delivered to the site, regularly inspect the Work to determine its compliance with the Construction Documents and this Contract For Construction, periodically

confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and

- (v) prepare and maintain Project records, process documents, and staff the site field office.

3.1.2 The General Contractor shall insure that the Work is (a) in compliance with the Construction Documents; and (b) complies with any applicable law, statute, building code, rule or regulation of any public authority or agency having jurisdiction over the Project.

3.1.3 The General Contractor shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The General Contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the General Contractor shall notify the Owner in accordance with other applicable provisions of this Contract for Construction of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.

3.1.4 The Professional, if agreed to between the Professional and the Owner, will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

3.2 **General Contractor's On-Site Facilities.** Commencing on the Date of Commencement and terminating on the Date Of Final Completion, the General Contractor shall provide:

3.2.1 The General Contractor ☐ shall / ☒ shall not provide an office trailer at the site for the duration of the Contract.

3.2.2 The General Contractor shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.

3.2.3 The General Contractor shall provide temporary toilets at the Site for all workers for the duration of the construction period.

3.2.4 The General Contractor shall be responsible for providing a temporary account for water supply for the duration of this contract. Upon completion of the work, the General Contractor shall remove the temporary facilities.

3.2.5 The General Contractor shall provide electrical service for the duration of this contract, and shall provide temporary wiring and shall be responsible for removing such temporary facilities at the completion of the work.

3.2.6 The General Contractor shall make all necessary arrangements and pay the costs associated with the installation and operation of telephone service for the General Contractor's use.

3.3 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4 EXTRA SERVICES

4.1 **Initiation Of Extra Services.** The General Contractor shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an "Additional Or Modified Required Service".

4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:

- (i) services performed after the Date of Final Completion, not contemplated by the original Scope of Services.
- (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the General Contractor, or its agents, employees, or consultants.
- (iii) other services not included in Required Services mutually agreed to by the Owner and the General Contractor in writing.

4.3 Payment of the General Contractor for Extra Services shall be in accordance with the approved Change Order issued in accordance with the Owner's Purchasing Policies and Procedures.

APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES

Not Applicable

CHAPTER 3 GENERAL TERMS AND CONDITIONS

ARTICLE 1 CONTRACT DOCUMENTS

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the General Contractor for execution of the Work shall be obtained by the General Contractor at its cost and expense from the reprographic company having the original documents.
- 1.2 **Return Of Documents To Owner.** The General Contractor shall return to the Owner the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Contract For Construction.
- 1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction, the General Contractor may request that the Construction Documents required by the General Contractor for the Work be furnished to it on electronic media, if such is available to the Owner. To the extent that such documents are available on electronic media, the General Contractor will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the General Contractor for execution of the Work shall be made by the General Contractor at the General Contractor's cost and expense.
- 1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the General Contractor concerning such documents. The General Contractor hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
 - 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
 - 1.6.3 As between plans and specifications, the requirements of the specifications shall govern;

1.6.4 Provided, however, that among the plans and specifications provided by the Owner, the more stringent requirement, as determined by the Owner, shall take precedence over less stringent requirements regardless of in which document the more stringent requirement resides.

1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the General Contractor or its subcontractors and suppliers do not constitute a part of this Contract For Construction, but are Construction Documents after approval by the Owner or Professional.

1.8 **Contract Changes.** The General Contractor understands and agrees that this Contract For Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties. All Change Orders shall be executed in accordance with the Owner's Purchasing Policy and Procedures.

ARTICLE 2 GENERAL CONTRACTOR'S REVIEWS AND EVALUATIONS

2.1 **Sufficiency Of Construction Documents And Drawings.** The General Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.

2.1.1 If the General Contractor performs any Work which is known to involve (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the appropriate Professional(s) to proceed, the General Contractor shall be responsible for the consequences of such performance.

2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the General Contractor and subcontractors shall verify all measurements and required quantities at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings.

2.1.3 If the General Contractor believes that additional time or cost is involved because of clarifications or instructions issued by the Professional as a result of the General Contractor's discovery of a conflict in the Construction Documents, the General Contractor shall follow the provisions of Article 9, Chapter 3. If the General Contractor fails to comply with subsection 2.1.1 or 2.1.2, the General Contractor shall pay such costs and damages to the Owner as would have been

avoided if the General Contractor had complied. The General Contractor shall not be liable to the Owner or Professional for damages resulting from errors, inconsistencies or omissions in the Construction Documents or for differences between field measurements or conditions and the Construction Documents unless the General Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Professional.

2.2 Sufficiency Of Site. Prior to signing this Contract For Construction, the General Contractor has

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and reviewed all other information provided by Owner and necessary for a full understanding of the Work. Owner will provide all hazmat and subsurface reports and test results, and all as-builts for existing facilities, utilities and infrastructure.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the General Contractor has also

- (iii) reviewed all available as-built and record drawings, plans and specifications; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Contract For Construction.

Claims resulting from the General Contractor's failure to familiarize itself as required in this Paragraph with the Site or pertinent documents shall be deemed waived.

ARTICLE 3
GENERAL CONTRACTOR'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

3.1 Performance Of Work. The General Contractor shall perform and complete its obligations under this Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract For Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

- 3.1.1 The General Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering, with the exception of providing engineering for pre-engineered components including but not limited to roof trusses, floor joists, metal roof systems and fire sprinkler systems. The General Contract shall also provide a certified as-built survey at project close-out.

- 3.1.2. All services rendered by the General Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered, unless such services are specifically required by the Construction Documents for a portion of the Work or unless the General Contractor needs to provide such services in order to carry out the General Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The General Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the General Contractor by the Construction Documents, the Owner and Professional shall specify all performance and design criteria that such services must satisfy. The General Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on the drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such Professional's written approval when submitted to the Professional. The Owner and the Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and the Professional have specified to the General Contractor all performance and design criteria that such services must satisfy. The Professional shall review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Construction Documents. The General Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Construction Documents.
- 3.1.3 The General Contractor shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.4 The General Contractor understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The General Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 3.1.5 The General Contractor shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the General Contractor damage, compromise or destroy any part of the Project or the Site, the General Contractor shall be fully and exclusively responsible for and bear all costs associated therewith. In the event General Contractor does not repair or replace any damaged portion of the Project or the Site, the Owner shall have the option to make such repairs or replacements and deduct the cost thereof from the balance of this Contract.

3.1.6 The General Contractor shall be responsible for the removal of all surplus material and debris occurring from the Work. Should the General Contractor fail to maintain a clean and safe site, including the buildings being constructed and/or renovated, the Owner shall retain the right to clean up and deduct the cost of such from the contract price.

3.2 **Compliance With Governmental Requirements.** The General Contractor shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) obtain all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; provided, however, that city water fees and any other permit or impact fee, government fee, or percolation testing for septic system, shall be included in the contract amount as an allowance; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the General Contractor at all times. The General Contractor shall be responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety and safety precautions and programs. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the General Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the General Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the General Contractor shall give timely written notice to the Owner and the Professional and shall not proceed with that portion of the Work without further written instructions from the Professional. If the General Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the General Contractor, the Owner shall be solely responsible for any resulting loss or damage.

3.4 **Concurrent Records.** The General Contractor shall, concurrently with performance, maintain detailed records of activities on the Site.

3.5 **As-Built Drawings.** The General Contractor shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the General Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction; provided, however, that the as-built drawings shall be kept electronically, and signed and sealed by the Professional, upon request of the Owner.

3.6 **Bribes And Kick-Backs.** The General Contractor shall not by any means:

- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
- (ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
- (iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
- (iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the General Contractor has a direct or indirect proprietary or other pecuniary interest.

3.7 **Quality Control And Testing.** The General Contractor shall develop and implement a quality management program to insure quality construction, if required by the Owner. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The General Contractor shall coordinate all tests and inspections required by the Construction Documents, and the General Contractor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.

3.8 **Incident Reporting.** The General Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.

3.9 **Hazardous Substances.** The General Contractor shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the General Contractor encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the General Contractor shall (i) immediately stop performance of Work on that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.

3.10 **Owner's Use Of And Access To The Site.** The General Contractor shall perform the Work so as not to interrupt any operations of the Owner on the Site.

- 3.10.1 The General Contractor understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the General Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.
- 3.10.2 The General Contractor shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The General Contractor understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
- 3.10.3 The General Contractor shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.
- 3.11 **Commissioning.** The General Contractor shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.
- 3.11.1 The General Contractor shall provide the Owner with operation and maintenance manuals and other operational documentation not less than thirty (30) calendar days prior to the required date of Final Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.
- 3.11.2 The General Contractor shall meet with the Owner's personnel not less than thirty (30) calendar days prior to the required date of Final Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

ARTICLE 4 GENERAL CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS AND SITE FACILITIES

- 4.1 **Project Staffing.** The General Contractor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 4.1.1 The General Contractor shall name a representative (the "General Contractor's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 4.1.2 The General Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The General Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

- 4.1.3 The General Contractor shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The General Contractor shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.5 The General Contractor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 4.2 **Subcontractor / Supplier Contracts.** The General Contractor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the General Contractor that the obligations of the General Contractor's subcontractors and suppliers inure to the benefit of the Owner and the General Contractor, and that the Owner be a third-party beneficiary of the General Contractor's agreements with its subcontractors and suppliers.
- 4.2.1 The General Contractor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The General Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the General Contractor, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The General Contractor's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The General Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the General Contractor's subcontractors and suppliers will perform services for the Owner.
- 4.3 **Resolution Of Trade Disputes.** The General Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.
- 4.4 **Alcoholic Beverages and Illegal Drugs.** No alcoholic beverages or illegal drugs are permitted on any of Owner's properties. Evidence of alcohol or drug use by an individual will result in the immediate removal of the person from the job site.

ARTICLE 5 GOODS, PRODUCTS AND MATERIALS

5.1 **Quality Of Materials.** The General Contractor shall furnish goods, products, materials, equipment and systems which:

- (i) comply with this Contract For Construction;
- (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- (iii) are new (unless otherwise specified or permitted) and without apparent damage;
- (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the General Contractor shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The General Contractor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 **Unsuitable Materials.** The General Contractor shall inform the Owner of goods, products, materials, equipment or systems which the General Contractor knows are unsuitable or unavailable. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented.

5.4 **Brand Name or Alternate.** Notwithstanding the foregoing, if a product or service has been identified in the specifications by brand name, such identification is intended to be descriptive and not restrictive and is to indicate the quality and characteristics of service that will be acceptable. However, if the General Contractor proposes to furnish an alternate product or service after this Contract For Construction has been fully executed, the General Contractor shall receive the written authorization from the Professional and Owner prior to incorporating such alternate product or service into the Work. An

alternate to the product/material specified will only be considered if the product/material is not readily available to meet the construction schedule. Also, such alternate will require cost comparison evidence and if found to be less expensive than the specified material, the Owner will be entitled to a credit for the cost difference. For purposes of this paragraph, an alternate shall be defined as a product or material differing substantially in quality and characteristics from the product or material set forth in the Contract Documents. If the Contract Documents specify an "or equal" product or material, an equal is defined as a product or material with the same quality or characteristics as that specified, but differing in brand name.

- 5.5 **Defective Materials.** If during or prior to construction operations the Owner or Professional rejects any portion of the Work on the grounds that the Work or materials are defective, the Owner or Professional shall give the General Contractor written notice of the defect. The General Contractor shall then have seven (7) calendar days from the date the notice is received to correct the defective condition.
- 5.6 **Security For The Project.** The General Contractor shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work, whether stored on or off site by the General Contractor, its subcontractors, materialmen or others under its supervision.
- 5.7 **Material Safety Data Sheets.** If any chemicals or materials or products containing toxic substances are to be used at any time during this contract, the General Contractor shall keep copies of all material safety data sheets on file with the contract documents located in the field office.
- 5.8 **Payment for Materials.** Unless otherwise provided in this Contract for Construction, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the General Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

ARTICLE 6 DOCUMENTS AND INFORMATION

- 6.1 **Information From Owner.** The Owner shall provide the General Contractor with information reasonably necessary to assist the General Contractor in performing its services including, if applicable:
- (i) the Site legal description and any required survey;
 - (ii) all written and tangible material in its possession concerning conditions below ground at the Site;

- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
 - (iv) the Owner's pertinent Project dates and key milestone dates.
- 6.2 **Resolution Of Questions.** The General Contractor shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.
- 6.3 **Processing Of Documents.** When requested to do so by the Owner, the General Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by General Contractor; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the General Contractor shall not relieve the General Contractor of responsibilities contained elsewhere in this Contract For Construction to evaluate information and documents provided by the Owner and the General Contractor shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the General Contractor to perform the Work.

ARTICLE 7 SUBMITTALS

- 7.1 **Submittal Schedule.** The General Contractor shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The General Contractor shall review and approve all submittals prior to submission to a Professional.
- 7.2 **Processing Of Submittals.** The General Contractor shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 A Professional is responsible to the Owner, but not to the General Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.
- 7.2.2 The General Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop drawings, product data, samples or similar submittals until the respective submittal has been

approved by the Professional. The Work shall then be performed in accordance with the approved submittals except that the General Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Professional's approval of shop drawings, product data, samples or similar submittals unless the General Contractor has specifically informed the Professional in writing of such deviation at the time of submittal and (i) the Professional has given written approval to the specific deviation as a minor change in the Work; or (ii) a change order or construction change directive has been issued authorizing the deviation. The General Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the Professional's approval thereof.

- 7.2.3 The Professional will review and approve, or take other appropriate action, upon the General Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Professional's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, General Contractor or separate contractors, while allowing sufficient time in the Professional's judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the General Contractor as required by the Contract Documents. The Professional's review of the General Contractor's submittals shall not relieve the General Contractor of its obligations hereunder, and the Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Professional, of any construction means, methods, techniques, sequences or procedures. The Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 7.2.4 By approving and submitting shop drawings, product data, samples and similar submittals, the General Contractor represents that the General Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

ARTICLE 8

GENERAL CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of the Project, the General Contractor shall inspect and promptly, whether at the direction of the Professional, Owner, or the General Contractor itself, reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 8.1.1 The General Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and

whether or not fabricated, installed or completed.

8.1.1.1 The General Contractor shall bear all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses necessitated by such corrections for Work that does not conform to the Construction Documents.

8.1.1.2 The General Contractor shall be compensated for all costs of correcting Work, including additional testing and inspections and compensation for all services and expenses, including but not limited to general conditions for extended time, necessitated by such correction for Work installed per the Construction Documents that is later determined by others to not comply with any applicable law, statute, building code, rule or regulation of any governmental, public or quasi-public authority or agency having jurisdiction over the project. The General Contractor is not responsible for conformance of the Construction Documents with any applicable laws, codes, statutes, rules or regulations.

8.1.2 The General Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the General Contractor's correction or removal of rejected Work, due to lack of conformance to the Construction Documents. If the General Contractor fails to correct any destroyed or damaged work, the Owner may take such steps as are necessary to repair or replace the destroyed or damaged work and deduct the cost thereof from this contract.

8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the General Contractor shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.

8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the General Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered, the General Contractor shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

8.3 **Acceptance of Non-conforming Work.** If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Construction Price shall be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 9
CHANGE ORDERS AND CHANGES TO THE WORK

- 9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules after execution of this Contract, and without invalidating this Contract. Unless otherwise specified herein, the Professional shall prepare the change orders and construction change directives. All Change Order requests shall be in writing and approved prior to the work which is the subject of the Change Order being completed, unless otherwise stated herein.
- 9.1.1 With respect to such requests for changes by the General Contractor, the General Contractor shall prepare and submit written change order requests to the designated Professional and Owner.
- 9.1.2 With respect to requests for changes by parties other than the General Contractor, the General Contractor shall promptly review and respond in writing to change order requests submitted by a Professional.
- 9.1.3 When requested to do so, the General Contractor shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.
- 9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the General Contractor to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract For Construction, and the General Contractor, upon written direction from the Owner, shall proceed with such change.
- 9.3 **Professional-Directed Changes.** A Professional, without the Owner's prior approval, may authorize or direct the General Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the General Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the General Contractor.
- 9.4 **Administration Of Changes.** The Professional and Owner will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the General Contractor, the General Contractor shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the

proposed change; and (iv) provide a reasonable price quotation to the designated Professional.

9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the General Contractor shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require that the subject Work be performed on a time and material basis.

9.5.2 The General Contractor and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

9.5.3 It is the responsibility of the General Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.

9.5.4 Additional work which is not part of the Contract Documents and which does not impact the critical path shall require an executed change order and is not entitled to an extension of time but the General Contractor shall be reimbursed the actual incurred costs and expenses paid to subcontractors and suppliers plus a markup of ten percent (10%) for General Conditions, Management Fee and overhead and profit.

9.5.4.1 The above conditions apply to the General Contractor's subcontractor and sub-subcontractor.

9.5.5 Additional work which is not part of the Contract Documents and which does impact the critical path shall require a change order and the General Contractor is entitled to an extension of time with all substantiated costs resulting from the extension of time and the actual incurred costs and expenses paid to subcontractors and suppliers plus a markup of ten percent (10%) to cover General Conditions, Management Fee and overhead and profit. See Paragraph 16.2.3.

9.5.5.1 The above conditions apply to the General Contractor's subcontractor and sub-subcontractor.

9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.

9.7 **Disputes Regarding Changes.**

9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner issues a Construction Change Directive. No claim shall be prejudiced by performance of

the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.

- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.
- 9.7.3 A Construction Change Directive is a written order prepared by the Professional and signed by the Owner and the Professional, directing a change in the Work prior to agreement on any change in the contract price, time or both. The issuance of a Construction Change Directive does not invalid the Contract for Construction. A Construction Change Directive shall be used in the absence of agreement on the terms of a Change Order. If the Directive provides for a change in the contract price, the adjustment shall be based on one of the following:
- (i) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - (ii) unit prices stated in the Contract Documents or subsequently agreed upon;
 - (iii) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - (iv) as set forth below.
- 9.7.4 The General Contractor shall promptly proceed with the Work upon receipt of a Construction Change Directive, and shall immediately advise the Professional of any disagreement with the method of compensation set forth in the Directive.
- 9.7.5 The General Contractor shall sign the Construction Change Directive if the General Contractor agrees with the adjustment in the time or contract price. Upon signature, the Change Order Directive shall be effective as a Change Order.
- 9.7.6 If the General Contractor does not respond promptly or disagrees with the method of adjustment, the method of adjustment shall be determined by the Professional on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, and shall include a reasonable allowance for overhead and profit. In such case, the General Contractor shall keep and present to the Professional an itemized accounting together with appropriate supporting data. Unless otherwise specified herein, costs shall be limited to:

- (i) costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance directly attributable to the change;
 - (ii) costs of materials, supplies and equipment, including the cost of transportation, whether incorporated or consumed directly attributable to the change;
 - (iii) rental costs of machinery and equipment, exclusive of hand tools, whether rented from the General Contractor or others directly attributable to the change;
 - (iv) costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work directly attributable to the change; and
 - (v) additional costs of supervision and field office personnel directly attributable to the change.
- 9.7.7 The amount of credit to be allowed by the General Contractor to the Owner for a deletion or change which results in a net decrease in the contract price shall be the actual net cost as confirmed by the Professional. When there are both increases and decreases in the Work, the allowance for overhead and profit shall be figured on the basis of net increase, if any, of the change.
- 9.7.8 Pending final determination of the total cost of the Change Directive, amounts not in dispute shall be included in future invoices for payment, accompanied by the Change Order. For costs in dispute, the Professional shall make an interim determination for purposes of monthly certification for payment for those costs. Either party may then submit a claim according to other provisions contained herein.

- 9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The General Contractor understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10 FINANCIAL CLAIMS AND LIENS

- 10.1 **Notification Regarding Liens.** The General Contractor shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, General Contractor's trust fund claims, or claims of any type made by anyone against the Owner, the Professional(s), the General Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.
- 10.2 **Discharge Of Liens.** The General Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project for which the

General Contractor has been paid. If any lien or claim filed is not discharged and released by the claimant, the General Contractor shall, within a reasonable period of time, but in no event more than fourteen (14) calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond.

ARTICLE 11 OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

- 11.1 Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's design representative from the effective date of this Contract For Construction until one (1) year from the date of achievement of Substantial Completion.
- 11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.
- 11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the Owner's advisor on claims.
- 11.2 Professional Site Visits.** The Professional(s) will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with (i) this Contract For Construction, including approved shop drawings and other submittals; (ii) the Construction Schedule; and (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.3 Professional Rejection Of Work.** The Professional(s) may disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 Professional Evaluations.**
- 11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection,

requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).

- 11.5 **Professional Submittal Activities.** The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen (14) calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The General Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Professional Interpretations.** A Professional will, when requested to do so in writing by the General Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.
- 11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.
- 11.8 **Professional Pay Application Activities.** The appropriate Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the General Contractor and shall authorize payment by the Owner to the General Contractor in writing. After the Work is determined to be finally complete and the Professional determines that the General Contractor has completed the Work, the Professional will determine whether the General Contractor is entitled to final payment, and if so will so certify to the Owner in writing.
- 11.9 **Professional Relationship To General Contractor.** The duties, obligations and responsibilities of the General Contractor under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The General Contractor shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the General Contractor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.

- 12.1.1 When the General Contractor believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.
- 12.1.2 At or prior to the Substantial Completion inspection, the General Contractor will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the General Contractor responsibility for security, utilities, damage to the Work and insurance;
 - (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for the Owner, the General Contractor and the Professional.
- 12.1.3 Upon receipt of notification from the General Contractor the appropriate Professional will coordinate with the Owner and the General Contractor a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:
- (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.
- 12.1.6 On or prior to the required date of Substantial Completion, the General Contractor shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the General Contractor of any deficiencies.
- 12.1.7 When the Owner, the General Contractor and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the General Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring

the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction. Failure of the General Contractor to include an item on the list does not alter the responsibility of the General Contractor to complete all Work in accordance with this Contract for Construction.

12.1.8 The General Contractor shall promptly correct the Work properly rejected by the Professional or failing to conform to the requirements of this Contract for Construction, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting the rejected Work, including additional testing and inspections and compensation for the Professional's services and expenses made necessary thereby, shall be at the General Contractor's expense.

12.1.9 Substantial Completion must be accompanied by a Certificate of Occupancy, unless the Certificate of Occupancy is unattainable outside of the General Contractor's control.

12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the General Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the General Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the General Contractor.

12.2.1 When the General Contractor believes the Work is finally complete, the General Contractor shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.

12.2.2 Upon receipt of such notification from the General Contractor, the Professional will coordinate with the Owner and the General Contractor a date for inspection of the Work to determine whether the Work is finally complete.

12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:

- (i) inspect the Work;
- (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
- (iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;

- (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
- (v) determine, in consultation with the Owner, whether the Work is finally complete.

12.2.4 If the Work is not finally complete, the General Contractor shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.

12.2.5 On or prior to the date of Final Completion, the General Contractor shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:

- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
- (ii) two (2) sets of as-built drawings and markups;
- (iii) certification and affidavit that all insurance required of the General Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
- (iv) written consent of the surety(ies), if any, to final payment;
- (v) full, final and unconditional waivers of mechanics or construction liens, releases of General Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
- (vi) full, final and unconditional certification and affidavit that all of the General Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery;
- (x) spare parts and attic stock, if any; and
- (xi) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.

- 12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the General Contractor, and will immediately inform the General Contractor about any deficiencies and omissions.

ARTICLE 13 GENERAL CONTRACTOR'S WARRANTIES AND GUARANTEES

- 13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the General Contractor, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one (1) year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.
- 13.1.1 The General Contractor shall schedule, coordinate and participate in a walk-through inspection of the Work one (1) month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.
- 13.1.2 Should the General Contractor fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the General Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the General Contractor's failure to correct the failure or defect.
- 13.2 **Express Warranties And Guarantees – General Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, the General Contractor expressly warrants and guarantees to the Owner:
- (i) that the Work complies with the Construction Documents;
 - (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
 - (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.
 - (iv) All work shall be guaranteed for one (1) year after completion and acceptance unless otherwise specified. The guarantees are to be construed as being supplemental in nature and in addition to any and all other remedies available to the Owner under the laws of the State of Florida.

- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The General Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the General Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the General Contractor.
- 13.3.1 Specifically, Florida Aquastore, manufacturer of the replacement tanks, shall provide a five (5) year warranty for the replacement tanks.
- 13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1 shall be construed to establish a period of limitation with respect to the General Contractor's obligations under this Contract For Construction. Paragraph 13.1 relates only to the General Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the General Contractor's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the General Contractor's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the General Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Timely Compensation Of General Contractor.** The Owner shall timely compensate the General Contractor in accordance with this Contract For Construction, and in accordance with Part VII, Chapter 218, Florida Statutes.
- 14.2 **Payment For Testing.** Unless otherwise required to be provided by the General Contractor in its scope of services, Owner shall secure and pay for all Project testing pursuant to the Schedule of Values.
- 14.3 **Owner Review Of Documents.** The Owner shall review documents prepared by the General Contractor in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the General Contractor of any of its responsibilities.
- 14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the General Contractor, for any of the foregoing purposes, be deemed the agent of the Owner.

14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The General Contractor shall be responsible to provide and pay for connections to, extensions from and means of using these utilities, unless otherwise specified herein.

14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for General Contractor's field offices.

14.5.2 Acceptance by the General Contractor of the use of the Owner's water, gas and electrical energy constitutes a release from the General Contractor to the Owner of all claims and liability for any damages or losses which may be incurred by the General Contractor as a result of water, gas and electrical energy outages or voltage variations or surges.

ARTICLE 15 GENERAL CONTRACTOR'S COMPENSATION

15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the General Contractor's Compensation Schedule is an estimate only, and the compensation to the General Contractor shall be determined by the actual number of units incorporated in, or required by, the Work. If unit prices are set forth in the Contract for Construction or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed change order or construction change directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or General Contractor, the applicable unit prices may be equitably adjusted.

15.2 **Schedule Of Values.** The General Contractor shall prepare and present to the Owner and the designated Professional the General Contractor's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The General Contractor's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The General Contractor shall not imbalance or artificially inflate any element of the schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the General Contractor's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.

15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the General Contractor shall invoice the Owner and the Owner shall pay the General Contractor the Construction Price.

15.3.1 In accordance with Chapter 1, Section 4.3, the General Contractor shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty (30) calendar days. Each invoice shall at a minimum state:

- (i) the total Construction Price;
- (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project;
- (iii) a breakdown of the various phases or parts of the Work as related to the Construction Price;
- (iv) the value of the various phases or parts of the Work actually performed;
- (v) previously invoiced amounts and credit payments made;
- (vi) the total amount due, less any agreed retainage;
- (vii) a current CPM schedule with every pay application;

and shall also have attached such lien waiver and other documentation verifying the General Contractor's payment to subcontractors and suppliers as the Owner or Professional may request. There shall be no payment made for materials, supplies or equipment stored off the job site.

15.4 Payment Procedures.

15.4.1 The Professional will review the General Contractor's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the General Contractor and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the General Contractor in writing. Such authorization will constitute the Professional's certification to the Owner that

- (i) the Work described in the General Contractor's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the General Contractor.

15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.

15.4.3 Payments shall be deemed timely if postmarked at least two (2) business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 15.

15.4.4 The Professional may withhold all or part of an application for payment to the extent reasonably necessary to protect the Owner if in the Professional's opinion the representations to the owner required by subsection 15.4.1 cannot be made. If the Professional is unable to certify payment in the amount of the application, the Professional shall notify the General Contractor and the Owner as provided

for herein. If the General Contractor and the Professional cannot agree on a revised amount, the Professional shall promptly authorize payment for the amount which the Professional is able to make such representations to the Owner. The Professional may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or part of an application for payment previously issued, to such extent as may be necessary in the Professional's opinion to protect the Owner from loss for which the General Contractor is responsible, including loss resulting from its acts and omissions, because of

- (i) defective Work not remedied;
- (ii) third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the General Contractor;
- (iii) failure of the General Contractor to make payments properly to subcontractors for labor, materials or equipment;
- (iv) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (v) damage to the Owner or other contractor;
- (vi) reasonable evidence that the Work will not be completed within dates established in the Construction Schedule, and that the unpaid balance would not be adequate to cover liquidated damages for the anticipated delay; or
- (vii) persistent failure to carry out the Work in accordance with this Contract for Construction.

15.5 **Owner's Right To Refuse Payment.** A Professional's approval of the General Contractor's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made in accordance with Part VII, Chapter 218, Florida Statutes, for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner, to the extent permitted by Part VII, Chapter 218, Florida Statutes, shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the General Contractor due to:

- (i) the General Contractor's failure to perform the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;
- (ii) the General Contractor's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the General Contractor's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;

- (iv) the General Contractor's failure to use funds previously paid the General Contractor by the Owner, to pay the General Contractor's Project-related obligations including, but not limited to, the General Contractor's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss caused by the General Contractor or the General Contractor's subcontractors, or suppliers; or
- (vii) the General Contractor's failure or refusal to perform any of its obligations to the Owner.

15.6 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent timely payment, the Owner shall notify the General Contractor in writing of such defect or impropriety in accordance with Section 218.735, Florida Statutes. Any disputed amounts determined by the Owner to be payable to the General Contractor shall be due in the time frames set forth in Section 218.735, Florida Statutes, from the date the dispute is resolved.

15.7 **Invoice Warranties And Guarantees.** The General Contractor expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner upon incorporation into the Work;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the General Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the General Contractor, or its subcontractors or suppliers.

15.8 **General Contractor's Signature.** The signature of the General Contractor on any invoice constitutes the General Contractor's certification to the Owner that (i) the General Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction; (ii) the General Contractor has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.

15.9 **Taxes.**

15.9.1 The Owner is exempt from federal excise taxes and all State of Florida sales and use taxes. The Owner will execute an exemption certificate if submitted by the General Contractor. Further, contractors doing business with the Owner are not exempt from paying sales tax to their suppliers for materials needed to fulfill

contractual obligations with the Owner, nor shall the General Contractor be authorized to use the Owner's tax exempt certificate or status in securing such materials. The General Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, appellate fees and costs, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes.

15.9.2 In accordance with Section 212.08(6), Florida Statutes, and Rule 12A-1.094, Florida Administrative Code, the Owner is tax exempt when it purchases tangible personal property for use in public works projects, subject to certain restrictions. In the event this project is declared a sales tax recovery project by the Owner, the following procedure shall apply:

- (i) The Owner, through the Department of Public Works, shall determine whether the Owner shall directly purchase certain materials required for the Work. If the Owner determines that the Owner shall directly purchase certain materials, the Owner shall notify the General Contractor in writing of the specific materials which the Owner intends to purchase.
- (ii) Within ten (10) calendar days from receipt of the written notice described in Paragraph 15.9.2(i), the General Contractor shall advise the Owner in writing of: (a) the date upon which the materials must be on-site according to the Construction Schedule approved at that time, (b) the date that the General Contractor directs that the Owner place the order for the described materials, (c) the location to which the materials are to be delivered, and (d) any other particular details of the order which the General Contractor requests that the Owner include in the Purchase Order to the vendor.
- (iii) The Owner may, but is not required to, provide the General Contractor with the proposed Purchase Order for the materials. In that case, the General Contractor shall review the Purchase Order for compliance with the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule. Within the earlier of: five (5) calendar days from the receipt of the proposed Purchase Order or the day prior to the date provided by the General Contractor pursuant to Paragraph 15.9.2(ii)(b) above, the General Contractor shall provide the Owner with written approval of the Purchase Order or shall provide written revisions to the Purchase Order, in order that the materials and the delivery thereof shall comply with the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.
- (iv) The Owner, through the Department of Facilities Development and Management, shall thereafter issue a Purchase Order for the materials with the vendor.
- (v) The Owner shall take title to those materials directly from the vendor and shall bear the risk of loss or damage to the materials which are delivered

by the vendor through the time that the materials are delivered to the location designated by the General Contractor. After the materials are delivered to the location designated by the General Contractor, the General Contractor shall have full responsibility for their storage, protection, risk-of-loss and installation pursuant to the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

- (vi) The vendor shall invoice the Owner directly for the materials purchased from the vendor. The Owner shall pay the invoices for the materials directly, presenting its sales tax exemption certificate to each vendor at the time of payment.

With respect to the materials specifically designated by this section, the General Contractor shall be relieved only of its responsibilities to place the order for the subject materials, to pay for the materials and to insure the materials against loss through the date that they are delivered to the location designated by the General Contractor. Otherwise, nothing herein shall revise or modify the General Contractor's responsibilities set forth in this Agreement, including, without limitation, the responsibility to schedule the timely ordering and delivery of the materials purchased under this Paragraph 15.9.2, the management of the materials once delivered or the incorporation of the materials into the Work, as provided in the Construction Documents, including, without limitation, the plans, specifications and Construction Schedule.

The cost of any materials purchased through the sales tax recovery program shall be deducted from the contract amount. The Owner and General Contractor shall execute a written change order described in this Agreement, and approved in accordance with the Owner's policy. The Change Order shall become a part of the Contract Documents as provided in this Agreement.

- 15.10 **Compensation Of General Contractor's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the General Contractor shall pay each of its subcontractors and suppliers out of the amount received by the General Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the General Contractor on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the General Contractor's subcontractors or suppliers.
- 15.11 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the General Contractor must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the General Contractor in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 16

SCHEDULE REQUIREMENTS

16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

16.1.1 Unless otherwise directed and approved by the Owner, the General Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.

16.1.2 The Construction Schedule shall include (i) the date of the Notice to Proceed, (ii) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (iii) any guideline and milestone dates required by the Owner; (iv) any applicable subcontractor and supplier subschedules; (v) a submittal schedule which allows sufficient time for review of documents and submittals; (vi) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vii) required decision dates.

16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the General Contractor's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

16.1.4 The General Contractor shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The General Contractor shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.

16.1.5 The General Contractor shall periodically and in all instances when the General Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

16.2 Delay In Performance.

16.2.1 The General Contractor expressly agrees to complete the work within the time specified. Upon request and approval as provided for in the Contract Documents, Owner may grant an extension of the allowable Contract Time when Work on the critical path is delayed by factors or impacts determined to be beyond the General Contractor's control which could not have been reasonably anticipated or contemplated at the time bids for the Work were received. Extension of the Contract Time will not be granted for impacts or delays due to fault or negligence of the General Contractor, or for non-excessive adverse weather conditions, and the Owner reserves the right to charge the General Contractor for all damages and costs to the Owner resulting from delays caused in whole or in part by the General Contractor. No claim for an extension of time for delays shall be considered unless notice is provided to the Owner in writing within twenty (20) business days after commencement of each such occurrence stating the probable duration of the delay and unless the General Contractor establishes by critical path method (CPM) analysis that the impact affects the critical path of the project and delayed the planned Substantial Completion date of the Work.

16.2.2 Claims relating to time shall be made in accordance with the applicable provisions of Chapter 3, Article 9.

16.2.3 If the General Contractor is delayed at any time in the progress or performance of the Work by acts or omissions of the Owner or Professional(s) or by any other cause which the Owner determines may justify the compensation of the General Contractor for the delay, the General Contractor's compensation shall be equitably adjusted. Delays of no material value outside of the General Contractor's control, excluding adverse weather conditions, which affect the critical path are entitled to an extension of time. If the General Contractor is granted an extension of time pursuant to this subsection, the General Contractor shall only be entitled to a pro-rata share of its initial General Condition and Management Fee set forth in its bid for each day of the extension. Delays of no material value outside the General Contractor's control which do not affect the critical path are not entitled to an extension of time, nor are they entitled to a General Conditions Fee, Management Fee or any other overhead and profit markup.

- (i) Subsection 9.5.4 shall apply to delays associated with additional work required by the Owner which does not impact the critical path nor require an extension of time.
- (ii) Subsection 9.5.5 shall apply to delays associated with additional work required by the Owner which does impact the critical path and does require an extension of time.
- (iii) Subsection 16.2.3 shall apply to delays, other than those associated with additional work required by the Owner, which does not impact the critical path, nor warrant an extension of time.

- (iv) Subsection 16.2.3 shall apply to delays, other than those associated with additional work required by the Owner, which does impact the critical path, and does warrant an extension of time.

- 16.3 **Modifications To Time For Performance.** The General Contractor shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s).
- 16.4 **Early Completion.** The General Contractor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the General Contractor's sole convenience and shall not create any additional General Contractor rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the General Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates.
- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The General Contractor may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the General Contractor's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the General Contractor's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The General Contractor shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.

ARTICLE 17 LIQUIDATED DAMAGES

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the Owner will incur damages if the Work is not completed on time. The General Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the General Contractor in the completion of the Work. If the

General Contractor inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the General Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion.

- 17.3 **Compensable Delay.** If the General Contractor is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; or (iii) any other cause which the Owner determines may justify the compensation of the General Contractor for the delay, the General Contractor's compensation shall be equitably adjusted to cover the General Contractor's actual and direct increased costs attributable to such delay.
- 17.4 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the General Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the General Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.
- 17.4.1 If and when the General Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the General Contractor those funds withheld, but no longer applicable, as liquidated damages.
- 17.4.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the General Contractor or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Unusual Conditions.** If (i) the General Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the General Contractor, the General Contractor shall promptly, but in no event later than two (2) business days after first observance of the conditions, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.
- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the General Contractor's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted.

18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) calendar days from the date of observation of the changed conditions.

18.1.3 The General Contractor's failure to notify the Professional(s) and Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

ARTICLE 19 GENERAL CONTRACTOR'S RECORDS

19.1 **Preparation Of Records.** The General Contractor shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

19.2 **Retention Of Records.** The General Contractor shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.

The General Contractor shall maintain substantiating records for five (5) years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the General Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the General Contractor shall continue to maintain all Project records until final resolution of the dispute or litigation.

19.3 **Access To Records.** Upon the request of the Owner, the General Contractor shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the General Contractor's records at the copying party's reasonable expense, within adequate work space at the General Contractor's facilities. Failure by the General Contractor to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

19.4 **Grant Funding.** The General Contractor agrees and acknowledges that if this Project is to be funded by Federal and State grant monies, or other local agency monies, the General Contractor shall agree to cooperate with the Owner in order to assure compliance with all requirements of the funding entity applicable to use of the monies, including providing access to and the right to examine relative documents related to the

Project and as specifically requested by the Federal or State granting agency. The General Contractor additionally hereby agrees to comply with all requirements of the funding entity applicable to the use of the monies, including receiving no payment until all required forms are completed and submitted. A copy of the requirements shall be supplied to the General Contractor by the Owner upon request.

ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the General Contractor (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the General Contractor to the extent permitted by the Florida Public Records law; and (v) shall not be used by the General Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance. The Owner hereby grants to the General Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the General Contractor for the Project are the sole property of the Owner free of any retention rights of the General Contractor. The General Contractor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the General Contractor for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 20.3 **Disclosure Of Information.** The General Contractor shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the General Contractor shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential to the extent permitted by the Florida Public Records law.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21 OWNER'S RIGHT TO STOP WORK OR RIGHT TO CARRY OUT WORK

- 21.1 **Cease And Desist Order.** If the General Contractor fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order

the General Contractor to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the General Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.

21.1.1 The General Contractor shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause if such stoppages are determined to be the fault of the General Contractor.

21.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the General Contractor or others.

21.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the General Contractor fails and refuses within seven (7) calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another General Contractor, and the General Contractor shall be responsible for the cost of performing such Work by the Owner.

21.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the General Contractor.

21.2 **Right to Carry Out Work.** If the General Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails to commence and continue correction of such default or neglect within seven (7) calendar days after receipt of the written notice from the Owner to do so with diligence and promptness, the Owner may after such seven-day period give the General Contractor a second written notice to correct such deficiencies. The second written notice shall require the General Contractor to correct such default or neglect within three (3) calendar days of receipt of the written notice. If the General Contractor fails to correct such deficiencies the Owner may, without prejudice to other remedies available to the Owner, correct the deficiencies and issue a Change Order deducting from the Contract Price the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Professional's additional services made necessary by the default, neglect or failure. Such action by the Owner and amounts charged to the General Contractor are both subject to prior approval of the Professional. If payment then or thereafter due the General Contractor are not sufficient to cover such amounts, the General Contractor shall pay the difference to the Owner.

ARTICLE 22

TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION

22.1 Termination For Cause By Owner.

22.1.1 The Owner may terminate this Contract For Construction for cause if the General Contractor materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein; or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and General Contractor.

22.1.2 Upon the occurrence of any of the events described in Paragraph 22.1.1, the Owner may give written notice to the General Contractor setting forth the nature of the default and requesting cure within seven (7) calendar days from the date of notice. At any time thereafter, if the General Contractor fails to initiate the cure or if the General Contractor fails to expeditiously continue such cure until complete, the Owner may give written notice to the General Contractor of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (iv) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the General Contractor;
- (v) directly pay the General Contractor's subcontractors and suppliers compensation due to them from the General Contractor;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the General Contractor to assign the General Contractor's right, title and interest in any or all of General Contractor's subcontracts or orders to the Owner.

22.1.3 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 22.3.

22.2 **Termination Due To Unavailability of Funds.** When funds are not appropriated or otherwise made available to support continuation of performance under this contract, the contract shall be cancelled and the General Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the goods or services delivered under the contract.

22.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the General Contractor terminating this Contract For Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the General Contractor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

22.4 **General Contractor's Compensation When Owner Terminates For Convenience.** If this Contract For Construction is (i) terminated by the Owner pursuant to Paragraph 22.3; or (ii) suspended more than three (3) months by the Owner pursuant to Paragraph 22.3, the Owner shall pay the General Contractor specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the General Contractor. Absent agreement on the additional amount due the General Contractor, the Owner shall pay the General Contractor:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the General Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages);
- (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.

22.5 **General Contractor's Compensation When Owner Terminates For Cause.** If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 22.1, no further payment shall be made to the General Contractor until Final Completion of the Project. At such time, the General Contractor shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the General Contractor, including liquidated damages applicable thereto. The General Contractor shall additionally reimburse the Owner for any additional costs or expenses incurred.

22.6 **Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the General Contractor shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.

22.7 **General Contractor's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the General Contractor shall, unless notified otherwise by the Owner,

- (i) immediately stop work;
- (ii) terminate outstanding orders and subcontracts;
- (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders with amounts paid by the Owner; and
- (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the General Contractor has.

22.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the General Contractor to exercise that right for the benefit of the Owner, the General Contractor or any other persons or entities.

22.9 **Limitation On Termination Claim.** If the General Contractor fails to file a claim within one (1) year from the effective date of termination, the Owner shall pay the General Contractor only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 23 APPLICABLE LAW AND DISPUTE RESOLUTION

23.1 **Applicable State Law.** This Contract For Construction shall be deemed to be entered into in and shall be interpreted under the laws of the State of Florida.

23.2 **Court Actions.** Except as expressly prohibited by law:

- (i) all legal actions hereunder shall be conducted only in the Circuit Court sitting in Lake County, Florida and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
- (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
- (iii) the parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and
- (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

23.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.

23.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

23.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.

23.4.2 The parties shall not be required to mediate for a period greater than ninety (90) calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.

23.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

23.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

23.4.5 The Owner, the Professional(s), the General Contractor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

23.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.

23.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by any arbitration proceedings.

23.7 **Performance During Dispute Resolution.** The Owner and the General Contractor agree that pending the resolution of any dispute, controversy, or question, the Owner and the General Contractor shall each continue to perform their respective obligations without interruption or delay, and the General Contractor shall not stop or delay the performance of the Work.

23.8 Claims and Disputes.

23.8.1 For purposes of this Contract For Construction, a claim is a demand by one of the parties seeking an adjustment or interpretation of the Contract Documents, Contract Price, Contract Time, or seeking resolution to other disputes or matters in question between the Owner and the General Contractor. Claims must be initiated by written notice to the Professional and other party within twenty-one (21) calendar days after reasonably recognizing that the event giving rise to the claim has or will have a cost or schedule impact, unless another provision of this Contract For Construction sets a different time. Pending final resolution of a claim, except as otherwise agreed to in writing executed by the parties, the General Contractor shall proceed diligently with performance of the Contract For Construction and the Owner shall continue to make payments in accordance with the Contract Documents. A claim shall be filed in accordance with this paragraph if the General Contractor believes that additional cost is involved for reasons including but not limited to (i) a written interpretation from the Professional; (ii) an order by the Owner to stop the Work where the General Contractor was not at fault; (iii) a written order for a minor change in the Work issued by the Professional; (iv) failure of payment by the Owner; (v) termination of this Contract For Construction by the Owner; (vi) Owner's suspension; or (vii) other reasonable grounds.

23.8.2 Claims shall be referred initially to the Professional for decision. An initial decision by the Professional shall be required as a condition precedent to mediation, arbitration or litigation of all claims between the General Contractor and the Owner, unless thirty (30) calendar days have passed after the claim has been referred to the Professional with no decision having been rendered by the Professional. The Professional shall not decide disputes between the General Contractor and persons or entities other than the Owner.

23.8.3 The Professional shall review claims within ten (10) calendar days of receipt and shall either (i) request additional supporting data from the claimant or a response with supporting data from the other party, to be submitted to the Professional within ten (10) calendar days of receipt of the request; (ii) reject the claim in whole or in part; (iii) approve the claim; (iv) suggest a compromise; or (v) advise the parties that the Professional is unable to resolve the claim. The Professional shall have the option to seek information from or consult with either party or other persons with special knowledge who may assist the Professional in rendering a decision. The Professional may also retain other persons as necessary with prior written approval of the Owner and at the Owner's expense.

23.8.4 The Professional shall approve or reject claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Price, Time or both. When a written decision of the Professional is rendered, the parties shall have sixty (60) calendar days to submit to mediation pursuant to these provisions. Failure to request mediation within this time frame shall result in the Professional's decision becoming final and binding upon the Owner and the General Contractor.

23.8.5 Upon receiving a claim against the General Contractor, the Professional or the Owner may, but is not obligated to, notify the surety, if any, of the nature and

amount of the claim. If the claim relates to the possibility of the General Contractor's default, the Professional or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

ARTICLE 24 DAMAGES AND REMEDIES

- 24.1 **General Contractor's Repair.** The General Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.
- 24.2 **General Contractor's Reimbursement.** The General Contractor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the General Contractor's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the General Contractor or of which the General Contractor was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the General Contractor.
- 24.3 **General Indemnity.** To the fullest extent permitted by law the General Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the General Contractor's services, including without limitation any breach of contract or negligent act or omission (i) of the General Contractor; or (ii) of the General Contractor's subcontractors or suppliers, or (iii) of the agents, employees or servants of the General Contractor or its subcontractors or suppliers.
- 24.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the General Contractor shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the General Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the General Contractor shall be responsible for such loss unless such information is promptly given to the Owner.
- 24.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.

- 24.6 **Waiver Of Damages.** The General Contractor shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 24.7 **Interest.** Interest shall be calculated in accordance with Part VII, Chapter 218, Florida Statutes.

ARTICLE 25 MISCELLANEOUS PROVISIONS

- 25.1 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the General Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the General Contractor, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 25.2 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 25.3 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction. Furthermore, no action or failure to act by the Owner, Professional, or General Contractor shall constitute a waiver of a right or duty afforded them under this Contract For Construction, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed to in writing.
- 25.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the General Contractor with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the General Contractor's obligations.
- 25.5 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the General Contractor.
- 25.6 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.
- 25.7 **Assignment.** Except as prohibited by applicable law, the General Contractor shall not assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the Owner. This includes a merger, stock buyout, or other form of transfer of ownership. The Owner and the General Contractor bind their successors and assigns to the other party to this Contract For Construction. Violation of this section shall be deemed a breach of contract and shall entitle the Owner to terminate this Contract For Construction with cause.

- 25.8 **Public Entity Crimes.** A person or affiliate who has been placed on the convicted vendor list following a conviction of a public entity crime may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.
- 25.9 **Prohibition Against Contingent Fees.** General Contractor warrants that they have not employed or retained any company or person, other than a bona fide employee working solely for the General Contractor to solicit or secure this Contract and that they have not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the General Contractor, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Contract.
- 25.10 **Non-Discrimination.** During the term of this Agreement General Contractor assures Owner that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, and the Florida Civil Rights Act of 1992, in that General Contractor does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminate in any form or manner against General Contractor's employees or applicants for employment. General Contractor understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.
- 25.11 **Right to Audit.** The Owner reserves the right to require the General Contractor to submit to an audit by any auditor of the Owner's choosing. General Contractor shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. General Contractor shall retain all records pertaining to this Agreement and upon request make them available to the Owner for three (3) years following expiration of the Agreement. General Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the Owner to ensure compliance with applicable accounting and financial standards.
- 25.12 **Public Records / Copyright.**
- A. All electronic files, audio and/or video recordings, and all papers pertaining to any activity performed by the Construction Manager for or on behalf of the County shall be the property of the County and will be turned over to the County upon request. In accordance with Chapter 119, Florida Statutes, each file and all papers pertaining to any activities performed for or on behalf of the County are public records available for inspection by any person even if the file or paper resides in the contractor's office or facility. The Construction Manager shall maintain the files and papers for not less than three (3) complete calendar years after the project has been completed or terminated, or in accordance with any grant requirements, whichever is longer. Prior to the close out of the contract, the Construction Manager shall appoint a records custodian to handle any records request and provide the custodian's name and telephone number(s) to the County.
- B. Any copyright derived from this agreement shall belong to the author. The author and the Construction Manager shall expressly assign to the County nonexclusive, royalty free rights to use any and all information provided by the Construction Manager in any deliverable and/or report for the County's use which may include publishing in County

documents and distribution as the County deems to be in the County's best interests. If anything included in any deliverable limits the rights of the County to use the information, the deliverable shall be considered defective and not acceptable and the contractor will not be eligible for any compensation.

ARTICLE 26 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

General Contractor: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

Construction Price: The dollar amount for which a General Contractor agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Construction: A written agreement between the Owner and a General Contractor for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under

any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

WALDORFF

INSURANCE & BONDING

September 10, 2010

Lake County
PO Box 7800
Tavares, FL 32778

RE: Beach Construction Company, Inc.
Bond No. 814447
Project: ITB No. 10-0819, Replacement of Leachate Tanks
Lake County Central Landfill, Tavares, FL

To Whom It May Concern:

Please be advised that this letter will serve, as confirmation to date the performance bond, payment bond and power of attorney on the above referenced project that our client, Beach Construction Company, Inc., is going to perform. If there should be any questions or need for further information please contact us.

Sincerely yours,



Benjamin H. French
Attorney-In-Fact
Westfield Insurance Company

BHF/mb

File: Beach Construction Company, Inc. – Surety

MAIN OFFICE
45 EGLIN PARKWAY, NE SUITE 202 (32548)
FORT WALTON BEACH, FL 32548
(850) 581-4925 FAX (850) 581-4930
TOLL FREE: (800) 342-7621



5023 NW 8TH AVENUE SUITE B (32605-4532)
P.O. Box 90027
GAINESVILLE, FL 32607-0027
(352) 374-7779 FAX (850) 581-4930
TOLL FREE: (888) 901-3841

WWW.WALDORFFINSURANCE.COM

FRONT PAGE OF PUBLIC PAYMENT & PERFORMANCE BOND
In compliance with F.S. Chapter 255.05(1)(a)

Bond No.: 814447

Contractor Name: Beach Construction Company, Inc.
Contractor Address: PO Box 141860
Gainesville, FL 32614
Contractor Phone No: 352-335-5556

Surety Company Name: Westfield Insurance Company
Surety Company Address: PO Box 5001
Westfield Center, OH 44251
Surety Company Phone No: 330-887-0101

Agent Name: Waldorff Insurance & Bonding, Inc.
Agent Address: 5023 NW 8th Avenue, Suite B
Gainesville, FL 32605
Agent Phone No: 352-374-7779

Obligee Name: Lake County
Obligee Address: PO Box 7800
Tavares, FL 32778
Obligee Phone No: 352-343-3776

Bond Amount: \$276,000.00

Contract No: (if applicable) ITB No. 10-0819

Description of Work: Replacement of Leachate Tanks

Project Address: Lake County Central Landfill
Tavares, FL

FRONT PAGE

All other bond page(s) are deemed subsequent to this page regardless of any page number(s) that may be pre-printed thereon.

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311

BOND # 814447

Performance Bond

This bond is given to comply with Section 255.05 Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes, and Section 255.05(10) Florida Statutes.

KNOW ALL MEN BY THESE PRESENTS: that

(Here insert full name and address or legal title of contractor)

Beach Construction Company, Inc., PO Box 141860, Gainesville, FL 32614, Phone 352-335-5556
as Principal, hereinafter called Principal, and,

(Here insert full name and address or legal title of Surety)

Westfield Insurance Company, PO Box 5001, Westfield Center, OH 44251, Phone 330-887-0101
as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

Lake County, PO Box 7800, Tavares, FL 32778, Phone 352-343-3776
as Obligee, hereinafter called Owner, in the amount of

Two hundred seventy-six thousand and 00/100

Dollars (\$276,000.00)

for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Contractor has by written agreement dated _____, entered into a contract with Owner for
(Here insert full name, address and description of project)

ITB No. 10-0819, Replacement of Leachate Tanks
Lake County Central Landfill, Tavares, FL
in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

Jones Edmunds & Associates, Inc., 730 Northeast Waldo Road, Gainesville, FL 32641, Phone 352-377-5821
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

- 1) Complete the Contract in accordance with its terms and conditions, or
- 2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of

defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this _____ day of _____, _____.

Walter R. Bishop

Walter R. Bishop

Beach Construction Company, Inc.

(Principal)

(Seal)

DAVID A. BEACH, President

Westfield Insurance Company

(Surety)

(Seal)

Benjamin H. French, Attorney-in-Fact &
FL Licensed Resident Agent

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A311

BOND # 814447

Labor and Material Payment Bond

THIS BOND IS ISSUED SIMULTANEOUSLY WITH PERFORMANCE BOND IN FAVOR OF THE OWNER CONDITIONED ON THE FULL AND FAITHFUL PERFORMANCE OF THE CONTRACT

This bond is given to comply with Section 255.05, Florida Statutes, and any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes, and Section 255.05(10) Florida Statutes.

KNOW ALL MEN BY THESE PRESENTS: that as

(Here insert full name and address or legal title of contractor)

Beach Construction Company, Inc., PO Box 141860, Gainesville, FL 32614, Phone 352-335-5556
as Principal, hereinafter called Principal, and,

(Here insert full name and address or legal title of Surety)

Westfield Insurance Company, PO Box 5001, Westfield Center, OH 44251, Phone 330-887-0101
as Surety, hereinafter called Surety, are held and firmly bound unto

(Here insert full name and address or legal title of Owner)

Lake County, PO Box 7800, Tavares, FL 32778, Phone 352-343-3776
as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of

Two hundred seventy-six thousand and 00/100

Dollars (\$276,000.00)

(here insert a sum equal to at least one-half of the contract price)

for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS,

Principal has by written agreement dated _____, entered into a contract with Owner for
(Here insert full name, address and description of project)

ITB No. 10-0819, Replacement of Leachate Tanks
Lake County Central Landfill, Tavares, FL
in accordance with Drawings and Specifications prepared by

(Here insert full name and address or legal title of Architect)

Jones Edmunds & Associates, Inc., 730 Northeast Waldo Road, Gainesville, FL 32641, Phone 352-377-5821
which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

LABOR AND MATERIAL PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions

1. A claimant is defined as one having a direct contract with the Principal or, with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

3. No suit or action shall be commenced hereunder by any claimant:

a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial

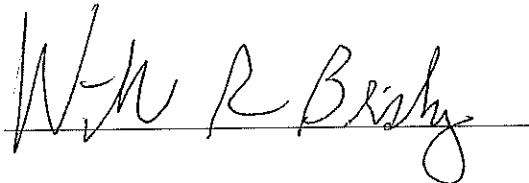
accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail; postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

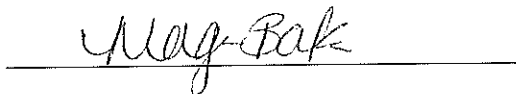
b) After the expiration of one 1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, or in the United States District Court for the district in which the Project, or any part thereof, is situated, and not elsewhere.

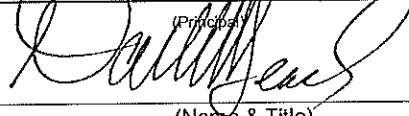
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____, _____.





Beach Construction Company, Inc.



(Principal)

(Seal)


(Name & Title)

DAVID A. BEACH, PRESIDENT

Westfield Insurance Company

(Surety)

(Seal)


Benjamin H. French, Attorney-in-Fact &
FL Licensed Resident Agent

THIS POWER OF ATTORNEY SUPERCEDES ANY PREVIOUS POWER BEARING THIS SAME
POWER # AND ISSUED PRIOR TO 01/12/09, FOR ANY PERSON OR PERSONS NAMED BELOW.

POWER NO. 0993902 06

General
Power
of Attorney

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

CERTIFIED COPY

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
BENJAMIN H. FRENCH, PAUL A. LOCASCIO, JOINTLY OR SEVERALLY

of **GAINESVILLE** and State of **FL** its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be it Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their Senior Executive and their corporate seals to be hereto affixed this 12th day of JANUARY A.D., 2009.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

Richard L. Kinnaird, Jr.

By:
Richard L. Kinnaird, Jr., Senior Executive

State of Ohio
County of Medina ss.:

On this 12th day of JANUARY A.D., 2009, before me personally came Richard L. Kinnaird, Jr. to me known, who, being by me duly sworn, did depose and say, that he resides in Medina, Ohio; that he is Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina ss.:

William J. Kahellin

William J. Kahellin, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this day of A.D.,



Frank A. Carrino
Frank A. Carrino, Secretary